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**FILED**

**JANUARY 21, 2009**

**BOARD OF PHARMACY**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF PHARMACY

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IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE LICENSE OF :

Administrative Action

**Thomas Kenny, R.P.**

License No.: 28RI101275300

TO PRACTICE PHARMACY IN THE :  
STATE OF NEW JERSEY :

**ORDER OF REINSTATEMENT**

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This matter was opened to the New Jersey State Board of Pharmacy ("the Board") upon receipt of respondent Thomas Kenny's application for reinstatement of his license to practice pharmacy in this State.

Respondent has a history of licensure restriction due to abuse of alcohol. Respondent's license to practice pharmacy in New Jersey was first suspended temporarily by Order dated December 2, 1994 following allegations of federal income tax evasion and then current treatment for alcoholism. By Order dated June 1995 his license was suspended for two years and nine months retroactive to March 1, 1995, the first three months and 16 days of the suspension was active with the remaining two years, five months and 14 days stayed and served as a period of probation with

substance abuse monitoring requirements. On May 23, 1996, a third Order was entered suspending Respondent until further Order of the Board based upon his relapse into the abuse of alcohol in September 1995 and his failure to submit weekly negative urine screens and documentation of attendance at support group meetings as required by the June 14, 1995 Order. By way of Order dated June 28, 1996, respondent's license to practice pharmacy was simultaneously reinstated and placed on a two year period of stayed suspension to be served as probation subject to certain substance abuse monitoring requirements. By way of Order dated March 24, 1999, respondent's license was revoked based on (1) his December 9, 1998 conviction for the crime or offense of operating a motor vehicle under the influence of alcohol on November 3, 1998 and (2) his false testimony to the Board of Pharmacy while under oath on December 2, 1998 that his last drink was in May 1998.

In support of his most recent application for reinstatement, respondent, testified under oath before the Board on July 23, 2008. He has not worked in any capacity since 1999. He went to Marworth in August 2005 for six weeks. Marworth referred him to Alina Lodge, a long term rehabilitation facility in Blairstown, New Jersey. Respondent was at Alina Lodge from September 7, 2005 until September 26, 2006. Materials provided by Alina Lodge indicate that respondent was discharged from Alina Lodge with a notation on his continuing care plan "It is recommended you remain at Alina Lodge for long term treatment of your alcoholism. As you are unwilling to follow this suggestion, it is recommended you seek long term treatment at another facility and remain until treatment is successfully completed." Nevertheless, his therapist cited "successful completion of goals" and "significant improvement" in respondent's discharge papers. Then he went to Tenley House, a half-way house where he lived with other professional people in Washington, D.C. for approximately 18 months, until March 2008. While at the half-way house, respondent went to AA

meetings two to three times a day and met regularly with an addiction psychiatrist. Respondent has provided no documentation of his participation in the halfway house program. Respondent testified that he currently goes to AA meetings once or twice every day and continues to meet with an addiction psychiatrist once a week. He further testified that his relationships with his wife and his children have improved.

Respondent testified that he has been sober since July 2005 with occasional "nips" of alcohol when he felt a compulsion for sweets. His last alcoholic drink was in March 2008, about two weeks after he left the halfway house in Washington and returned home. Respondent currently takes the prescription medications Depakote, Celexa and Avandia in addition to medications prescribed for diabetes.

Respondent testified that he has completed all CE required by the Board and frequently reads journals and other publications to keep current on new drugs.

Dr. Edward Reading of the PAP also appeared on July 23, 2008 and testified that the PAP supports respondent's application for licensure reinstatement with certain monitoring restrictions.

Respondent, being desirous of resolving this matter without the necessity of further formal proceedings, and agreeing to waive any right to same, and the Board having determined that, given the period of time respondent has been out of practice and the issues which caused the revocation of his license, this Order is sufficiently protective of the public health, safety and welfare, and all parties agreeing to the terms of this Order;

**ACCORDINGLY, IT IS on this 21<sup>st</sup> day of JANUARY, 2008,<sup>o</sup>  
ORDERED THAT:**

1. Respondent's license shall be reinstated following his provision to the Executive Director of the Board of the following documents which shall all be to the satisfaction of the Board:

- a. Complete treatment records of all diagnostic and rehabilitative therapy and an in-depth, current evaluation from a psychiatrist or psychologist knowledgeable in addiction therapy and approved in advance by the PAP. In addition, respondent shall provide reports from each and every mental health professional (including, but not limited to: psychologists, psychiatrists, counselors, and therapists) who have participated in respondent's care and/or treatment in this matter during the period of time from his appearance before the Board on July 23, 2008 and the present.
- b. Documentation of successful completion of the NAPLEX licensing examination.
- c. Documentation of successful completion of the Multi-state Pharmacy Jurisprudence Examination (MPJE).
- d. After successful completion of the NAPLEX and MPJE, respondent shall enter into and submit documentation of successful completion of a board approved six month practicum/internship with a Board approved preceptor. Successful completion means that the preceptor supports without reservation the reinstatement of respondent's license to practice pharmacy.
- e. Documentation of all continuing education credits required by N.J.A.C. 13:39-3A.1 to 13:39-3A.7 for the all biennial periods beginning with the 2007-2009 biennial period and extending until the present.
- f. Proof of successful completion of all application requirements including a Criminal History Background Check and payment of all reinstatement fees.
- g. Documentation of absolute abstinence from all psychoactive substances and full compliance with the monitoring program set up for him by the PAP from the date of his appearance before the Board on July 23, 2008 to the date of his reinstatement. Documentation shall include, but not be limited to (i) Random witnessed urine monitoring under the supervision of the PAP on a random, unannounced basis, at a frequency of no less than 2 times per week. All random witnessed alcohol and drug screens shall be negative for the presence of alcohol or drugs, unless the drugs detected by screening were taken for a documented illness pursuant to a valid prescription from a health care practitioner aware of Respondent's substance abuse history. (ii) Documentation of attendance at Alcoholics Anonymous at a frequency of not less than three meetings per week. (iii) A written report from the PAP describing respondent's monitoring program, indicating that Respondent has been fully compliant with his monitoring program and containing a wholehearted recommendation that respondent's license be reinstated.

2. After respondent has complied with all the requirements of paragraph one of this Order to the satisfaction of the Board, respondent's license to practice pharmacy shall be reinstated subject to the conditions in paragraphs three through eight of this Order.

3. Respondent will comply fully with the monitoring program established for him by the PAP. Such monitoring program shall include but not be limited to:

- a. Absolute abstinence from all psychoactive substances including alcohol unless prescribed by a treating health care professional for a documented medical condition and with notification from the treating health care professional to the executive medical director of the PAP of the diagnosis and treatment regime within five days of issuing the prescription. Respondent shall advise all of his treating health care practitioners, who prescribe medications, of his addiction history and shall be responsible to ensure that the treating health care professional notifies the PAP of any prescription for a psychoactive substance within five days of issuance of the prescription. Respondent shall also personally notify the PAP of any prescription for psychoactive substance within five days of issuance of the prescription.
- c. Respondent shall attend support group meetings of Alcoholics Anonymous at a frequency of not less than three meetings per week. Respondent shall provide evidence of attendance at such groups directly to the PAP on a form or in a manner as required by the PAP.
- d. Respondent shall undergo random witnessed urine monitoring under the supervision of the PAP on an unannounced basis, at a frequency of no less than 2 times per week for the first twelve months following Respondent's return to practice. Subsequent reductions in the frequency of urine screens shall be at the direction of the executive medical director of the PAP consistent with Respondent's duration in recovery with prior notification to the State Board of Pharmacy. All test results shall be provided in the first instance directly to the PAP and any positive result shall be reported immediately by the PAP to the Executive Director of the Board.
- e. The Board reserves the right to require a modification of the manner of the random witnessed urine testing by the PAP in the event technical developments or individual requirements indicate that a different methodology or approach is required to guarantee the accuracy and reliability of the testing.
- f. Respondent's failure to submit to or provide a urine sample within twenty-four hours of a request shall be deemed to be the equivalent of a confirmed positive urine test and shall be deemed a violation of this order unless Respondent is unable to appear for a scheduled urine test due to illness or other impossibility. Respondent must

advise the Board in writing within two (2) days, and cause the PAP to so advise the Board in writing within (2) days, of a claimed illness or impossibility. If Respondent fails to appear for a scheduled urine test due to illness, Respondent shall provide to the Board, written substantiation of the illness in the form of a physician's report, within two (2) days. "Impossibility" means an obstacle beyond the control of Respondent that is insurmountable or that makes his appearance for the urine test so infeasible that a reasonable person would waive Respondent's requirement to give the urine sample that day.

- g. All random witnessed alcohol and drug screens shall be negative for the presence of alcohol or drugs, unless the drugs detected by screening were taken for a documented illness pursuant to a valid prescription from a health care practitioner aware of Respondent's substance abuse history. All positive results shall be confirmed by the Gas Chromatography Mass Spectrometry (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.
- h. Any urine test result showing creatinine levels below 20 mg/dl and a specific gravity below 1.003 shall create a rebuttable presumption of a confirmed positive urine test, and shall be followed by a confirming test. The method of the confirming test shall be determined by the PAP.
- i. Respondent shall become familiar with all foods, food additives or other products (such as poppy seeds) which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Respondent specifically agrees that ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.
- j. Respondent shall submit to continued monitoring by the PAP and shall meet with the PAP on a face-to-face basis at least once a month for a minimum of one year following Respondent's return to practice, with subsequent reductions at the direction of the executive medical director of the PAP consistent with Respondent's duration in recovery and with prior notification to the State Board of Pharmacy.
- x k. Respondent shall be responsible to ensure that the PAP shall supply reports every ninety (90) days beginning on the "filed" date of this Order to the Board regarding his progress with the monitoring program.
- l. Respondent shall obtain the agreement of the PAP via a signature of its representative on this Order to notify the Board within 24 hours of its receipt of information of any noncompliant behavior, slip or relapse of impairment, including but not limited to any positive urine screen or failure to appear for urine monitoring

or any scheduled appointment or any discontinuance of the PAP rehabilitation program whether initiated by Respondent or by the PAP.

m. Respondent expressly waives any claim to privilege or confidentiality that he may have concerning reports and disclosures to the Board, and use by the Board of that information in any license proceedings, including reports and disclosures by the urine monitoring program, or the PAP, or any other person or entity involved in his rehabilitation program.

n. All costs associated with the monitoring outlined above shall be the responsibility of, and paid directly by, Respondent.

4. A copy of this Order shall be provided to all employers where a pharmacy license is required for employment or where the respondent has access to medication, prescriptions or patient profiles. The respondent shall ensure that each employer notifies the Board in writing that he or she has received this Order prior to respondent beginning employment. The respondent shall inform the Board in writing of any employment changes, including periods of unemployment, and shall also provide a detailed description of his job, role and responsibilities.

5. Respondent shall not act as a preceptor or a pharmacist-in-charge (RPIC) at any pharmacy and shall not own or have an ownership interest in any pharmacy until further Order of the Board

6. Respondent shall be directly supervised at all professional settings by a supervisor pre-approved by the Board for one year following the reinstatement of his license to practice pharmacy. Prior to beginning any employment, Respondent shall ensure that his supervisor confirms with the Board, in writing, that he/she has seen this consent order and agrees to supervise respondent.

7. Respondent hereby consents to the entry of an Order of automatic suspension of license without notice, upon the Board's receipt of any information which the Board in its sole discretion deems reliable that Respondent has failed to comply with any of the conditions set forth

above, any other provision of this Order, any report of a confirmed positive urine, or a prima facie showing of a relapse or recurrence of the use of alcohol or a psychoactive substance which is not prescribed by a treating health care professional with notification to the PAP as described in ordered paragraph 3a.

8. Respondent shall have the right to apply for removal of the automatic suspension on five (5) days notice but in such event shall be limited to a showing that the urine tested was not his or was a false positive in the case of urine testing, or that other information submitted was false.

NEW JERSEY STATE BOARD OF PHARMACY

By: Edward McGinley  
Edward McGinley, R.P.,  
President

I have read the within Order  
and understand its terms. I  
consent to the entry of this  
Order by the New Jersey Board  
of Pharmacy.

Thomas Kenny  
Thomas Kenny, R.P.

Louis E. Baxter, Sr., M.D., FASAM  
Medical Director  
Physicians Assistance Program